

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
MIDPORT ELECTRONICS, INC.)	FCC File Nos. 0003C029105, 0002C028039,
)	9809C006240, 0001C025994,
Licensee of Trunked Industrial/Business Pool)	0001C025301, 9605D037530
Stations WPQF373, WPQC503, WPNP688,)	
WPKA269, WPLS641, Toledo, Ohio and)	
Conventional Industrial/Business Pool Station)	
WPJP449, Toledo, Ohio)	
)	
And)	
)	
GRH & ASSOCIATES, INC.)	FCC File No. 9809C006188
)	
Licensee of Trunked Industrial/Business Pool)	
Station WPMS522, Toledo, Ohio)	

ORDER

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order* we address the status of six Private Land Mobile Radio (PLMR) stations licensed to Midport Electronics, Inc. (Midport), and one PLMR station licensed to GRH & Associates, Inc. (GRH). As discussed in further detail herein, we find that five of the six subject stations licensed to Midport and the station licensed to GRH have automatically cancelled for failure to construct. Thus, we conclude that Midport and GRH no longer have valid authorizations to operate such stations.

2. *Background.* Between 1996 and 2000, the FCC granted Midport authorization to operate trunked Industrial/Business (I/B) Pool Stations WPQF373,¹ WPQC503,² WPNP688,³ WPKA269,⁴ WPLS641,⁵ and conventional I/B Station WPJP449,⁶ in the Toledo, Ohio area. On December 12, 1998, the FCC granted GRH authorization to operate trunked I/B Pool Station WPMS522⁷ in the Toledo, Ohio

¹ FCC File No. 0003C029105 (filed Mar. 24, 2000).

² FCC File No. 0002C028039 (filed Feb. 14, 2000).

³ FCC File No. 9809C006240 (filed Sept. 7, 1998).

⁴ FCC File No. 0001C025994 (filed Jan. 18, 2000).

⁵ FCC File No. 0001C025301 (filed Jan. 7, 2000).

⁶ FCC File No. 9605D037530 (filed May 29, 1996).

⁷ FCC File No. 9809C006188 (filed Sept. 14, 1998).

area. With the exception of Station WPJP449, the aforementioned I/B Pool stations were authorized in the 421-430 MHz band. Station WPJP449 was authorized to operate in the 450-470 MHz band.

3. Between June and September 2001, Midport and GRH filed separate license modification applications for Stations WPQC503,⁸ WPNP688,⁹ WPKA269,¹⁰ WPLS641¹¹ and WPMS522.¹² Each application was accompanied by a request for waiver of “Rule Section 90.275(c)” in order to permit Midport and GRH to operate Stations WPQC503, WPNP688, WPKA269, WPLS641 and WPMS522 at a location other than that authorized by their licenses and more than fifty miles from the geographic center coordinates of Detroit, Michigan.¹³ While Section 90.275(c) does not exist, we believe, based on the substance of their waiver requests and response to our subsequent inquiry, *see infra* para. 5, that Midport and GRH intended to seek waiver of Section 90.273(c) of the Commission’s Rules, which confines base stations in the 421-430 MHz band to within fifty miles of the geographic center coordinates of certain cities, including Detroit, Michigan.¹⁴ Midport also requested an extension of the applicable construction deadline for Station WPQF373.¹⁵

4. On August 30, 2001, Futronics, Inc. (Futronics) filed a “Petition for Initiation of License Revocation Proceeding” against the above-captioned stations.¹⁶ Futronics alleges that Midport and GRH constructed the above-captioned facilities at an unauthorized location, which Futronics alleges is located more than fifty miles from the geographic center coordinates of Detroit, and in violation of Section 90.273(c) of the Commission’s Rules.¹⁷ Futronics alleges that the above-captioned facilities are also located approximately four miles from the authorized coordinates. The authorized coordinates are approximately forty-nine miles from Detroit’s geographic center coordinates.¹⁸

⁸ See FCC File No. 0000556481 (filed Sept. 7, 2001).

⁹ See FCC File No. 0000518294 (filed Sept. 6, 2001).

¹⁰ See FCC File No. 0000519191 (filed Jun. 29, 2001).

¹¹ See FCC File No. 0000519193 (filed Jun. 29, 2001).

¹² See FCC File No. 0000583106 (filed Sept. 4, 2001).

¹³ Letter from Jerry Howard to Michael Regiec, Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch, FCC (Feb. 15, 2002) (Response). See FCC File Nos. 0000556481, 0000518294, 0000519191, 0000519193, and 0000583106 at waiver attachment.

¹⁴ See Response at 1 *citing* 47 C.F.R. § 90.273. Because the construction of Stations WPQC503, WPNP688, WPKA269, WPLS641, and WPMS522 at a location other than that authorized constitutes a major modification to the Midport and GRH authorizations, a license modification application requesting prior Commission authority was required. See 47 C.F.R. §§ 1.929(c)(4)(v), 1.947, 90.135, 90.164 (1998). Additionally, such applications must also be accompanied by a request for waiver of Section 90.273(c)’s fifty-mile limitation. See 47 C.F.R. §§ 1.925, 90.151 (1998).

¹⁵ The Commission’s licensing records indicate that Midport withdrew an application concerning Station WPQF373 that it filed on September 14, 2001 and subsequently filed a modification application on September 17, 2001. See FCC File Nos. 0000592280 (filed Sept. 14, 2001) 0000593600 (filed Sept. 17, 2001). Midport’s September 17, 2001 modification application is accompanied by request for extension of the applicable construction deadline. See FCC File No. 0000593600 at extension attachment.

¹⁶ Request for Initiation of License Revocation Proceeding filed by Futronics, Inc. (filed Aug. 30, 2001) (Request).

¹⁷ Request at 2-3, *citing* 47 C.F.R. § 90.273(c).

¹⁸ Request at 2-4 n.4, n.7-11, Exhibits 1-5. Futronics also alleges that Midport and GRH knowingly provided incorrect coordinate data on their applications. *Id.* at 4. We reserve the right to investigate this allegation further should circumstances warrant.

5. By letter dated January 18, 2002 and pursuant to Section 308(b) of the Communications Act of 1934, as amended,¹⁹ Midport and GRH were directed to provide certain information regarding the construction and operational status of the captioned stations.²⁰ On February 15, 2002, Midport and GRH responded to our inquiry.²¹ Midport and GRH indicate that an error occurred in providing the coordinate data on the initial applications for the captioned stations.²² Midport represents that Station WPJP449 was timely constructed and that Station WPQF373 was never constructed.²³ Midport and GRH also represent that they constructed on some, but not all of the frequencies assigned under Stations WPQC503, WPNP688, WPKA269, WPLS641, and WPMS522.²⁴ On March 1, 2002, Futronics filed a "Reply to Response to Information Request" seeking a set-aside of the license grants to Midport and GRH.²⁵ On April 5, 2002, Futronics filed a "Petition to Deny" the modification applications and their associated waiver requests and the construction extension request.²⁶

6. *Discussion.* Under the Commission's Rules in effect at the time of the license grants, Midport and GRH were required to construct and commence operation of Stations WPQF373, WPQC503, WPNP688, WPKA269, WPLS641, WPJP449, and WPMS522 within eight months of license grant.²⁷ Unless an extension of time has been granted, station licenses cancel automatically when construction and operation deadlines are not met.²⁸

¹⁹ 47 U.S.C. § 308(b).

²⁰ Letter from John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, to Jerry Howard, Executive Vice-President (Jan. 18, 2002).

²¹ Response at 1.

²² *Id.* at 1.

²³ *Id.* at 3-4.

²⁴ Midport represents that it constructed Station WPQC503 on 422.2250 MHz, 422.5000 MHz, 424.4000 MHz, and 424.4250 MHz and did not construct on 424.4750 MHz, 424.5000 MHz, and 424.7750 MHz. *Id.* at 3. Midport represents that it constructed Station WPNP688 on 424.6750 MHz and did not construct on 422.5750 MHz, 422.8750 MHz, 424.7500 MHz, and 422.2500 MHz. *Id.* Midport represents that it constructed Station WPKA269 on 422.8000 MHz, 424.7000 MHz, and 424.9000 MHz and did not construct on 422.8250 MHz, and 422.6000 MHz. *Id.* Midport represents that it constructed Station WPLS641 on 424.9750 MHz and did not construct on 422.9750 MHz, 424.7250 MHz, 424.8500 MHz, and 422.7500 MHz. *Id.* GRH represents that it constructed Station WPMS522 on 422.5500 MHz, 422.8500 MHz, and 422.2750 MHz and did not construct on 422.4750 MHz and 424.4500 MHz. *Id.* at 4. We note, however, that in Midport's response to construction audit letter Reference # 155921, Midport represented "build out completed" for Stations WPKA269 and WPLS641. *See* Wireless Telecommunications Bureau Announces Commencement of an Audit of the Construction and Operational Status of Private Land Mobile Radio Stations, *Public Notice*, 16 FCC Rcd 14264 (WTB 2001) (station construction and operation audit of PLMR licensees below 512 MHz). Licensees must provide true and complete responses, and may be subject to sanctions for misrepresentations or willful omissions. *See id.* n.2; 47 C.F.R. §§ 1.17, 1.80. *See also* 47 U.S.C. § 503(b).

²⁵ Reply to Response to Information Request filed by Futronics, Inc. (Mar. 1, 2002) (Reply to Response). Futronics argues that the Midport and GRH response letter was incomplete and inconsistent with previous statements. Futronics also alleges that the response letter demonstrates that Midport and GRH's applications were void *ab initio*, that the stations were not timely constructed and were constructed in violation of Section 90.273 of the Commission's Rules.

²⁶ Petition to Deny filed by Futronics, Inc. (filed Apr. 5, 2001).

²⁷ 47 C.F.R. §§ 1.946, 90.155 (2000) (eight month construction period). In the *Part 90 Biennial Review Report and Order*, the Commission amended its rules to change the time in which a station must be placed in operation from eight months to twelve months. *See* 1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services WT Docket No. 98-182 RM-9222 Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing them PR Docket No. 92-235 and Examination of

(continued...)

7. Midport represents that Station WPJP449, which in August 1996 was authorized to operate in the 450-470 MHz band, was timely constructed at its authorized coordinates and is currently operational.²⁹ We deny Futronics' Petition and Reply to Response relative to Station WPJP449 because we find that Futronics has provided no objective evidence that Station WPJP449 was not timely constructed. Additionally, we find that Section 90.273 of the Commission's Rules does not apply to stations licensed in the 450-470 MHz band. Accordingly, we find that neither argument presented by Futronics warrants further action with regards to Station WPJP449. Therefore, we deny Futronics' set aside request as unnecessary and unwarranted based on the information before us.

8. Midport represents that Station WPQF373 was never constructed and that on September 14, 2001, it requested an extension of the construction deadline in connection with an application to modify Station WPQF373.³⁰ The initial application for Station WPQF373 was granted on June 21, 2000 and, thus the associated construction deadline was February 21, 2001. Therefore, based on the information before us, we find that the license for Station WPQF373 cancelled automatically for failure to construct.³¹ Section 1.946(e) of the Commission's Rules requires extension requests to be filed before the end of the construction period.³² Because Station WPQF373 cancelled for failure to construct, approximately seven months before Midport filed its extension request we hereby dismiss Midport's extension request as moot and dismiss Midport's underlying modification application for Station WPQF373.³³

9. Midport represents that the channels that it constructed under Stations WPQC503,³⁴ WPNP688,³⁵ WPKA269³⁶ and WPLS641,³⁷ were constructed at a location more than one mile from that authorized on its license. GRH also represents that the channels it constructed under Station WPMS522³⁸ was constructed at the same location as the Midport stations, which are located more than one mile from

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Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 16673 ¶ 12 (2000). This change became effective in November 2000.

²⁸ 47 C.F.R. §§ 1.946; 1.955.

²⁹ Response at 2-3. Station WPJP449 was authorized on August 20, 1996.

³⁰ Response at 2.

³¹ 47 C.F.R. § 1.955(a)(2).

³² 47 C.F.R. § 1.946(e).

³³ See Daniel R. Goodman, Receiver; Dr. Robert Chan, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 21944, 21972 n.185 (1998) (licensees seeking an extension of time to construct must file their waiver request prior to the cancellation of its license because the license cancels at the end of the original construction deadline).

³⁴ The authorization for Station WPQC503 was granted on May 22, 2000, and the construction deadline was January 22, 2001. Midport represents that it partially constructed Station WPQC503 between July 2000 and February 2001. Response at 2-3.

³⁵ Station WPNP688 was authorized on April 23, 1999, and the construction deadline was December 23, 1999. Midport represents that it partially constructed Station WPNP688 in August 1999. Response at 2-3.

³⁶ Station WPKA269 was authorized on December 31, 1996, and the construction deadline was August 31, 1997. Midport represents that it partially constructed Station WPKA269 in March 1998. Response at 2-3.

³⁷ Station WPLS641 was authorized on January 13, 1998, and the construction deadline was September 13, 1998. Midport represents that it partially constructed Station WPLS641 in March 1998. Response at 2-3.

³⁸ Station WPMS522 was authorized on December 1, 1998, and the construction deadline was August 1, 1999. GRH represents that it partially constructed Station WPMS522 in June 1999. Response at 2-3.

the authorized coordinates on GRH's license. Midport and GRH state that the facilities are located more than fifty miles from the geographic center coordinates of Detroit.³⁹

10. We conclude that Midport and GRH's authorizations for Stations WPQC503, WPNP688, WPKA269, WPLS641, and WPMS522 cancelled automatically. The Commission has expressly stated that it will require a licensee to construct a base station that is operational on all of the channels assigned.⁴⁰ Construction of the base station, the Commission said, must be in substantial accordance with the parameters specified in the station authorization.⁴¹ All channels not so constructed will be recovered from the licensee.⁴² Commission precedent establishes that absent unique circumstances, if a licensee constructs facilities more than one mile from its authorized coordinates, that license was not constructed in substantial accordance with its authorized parameters.⁴³ Midport and GRH contend in their response that they recently discovered that an error occurred in providing the coordinate data on the applications for Stations WPQC503, WPNP688, WPKA269, WPLS641, and WPMS522.⁴⁴ Midport and GRH, however, were responsible for providing accurate coordinates to the Commission, and could have filed modification applications to correct the coordinate data error before the expiration of the construction period.⁴⁵ Further, we believe Midport and GRH could have more accurately determined the correct coordinates.⁴⁶ Particularly in light of the fact that Midport and GRH would have required a waiver of the rules to operate at its actual constructed location, we find that they have failed to demonstrate that the stations were built in substantial accordance with their authorizations. Therefore, we conclude that Midport's and GRH's authorizations for Stations WPQC503, WPNP688, WPKA269, WPLS641, and

³⁹ Response at 2-3.

⁴⁰ See Amendments of Parts 1 and 90 of the Commission's Rules concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, PR Docket No. 90-481, *Report and Order*, 6 FCC Rcd 7299 ¶ 9 (1991) (*Report and Order*).

⁴¹ *Id.*

⁴² *Id.*

⁴³ See James A. Cassell, *et al.*, *Memorandum Opinion and Order*, 11 FCC Rcd 16720 (1996) *aff'g*, Lawrence E. Vaughn, Jr., *Order*, 10 FCC Rcd 10885 (WTB 1995), *aff'g*, Lawrence E. Vaughn, Jr., *Order*, 9 FCC Rcd 4438 (1994). This standard was affirmed by the U.S. Court of Appeals for the District of Columbia. See *Cassell v. FCC*, 154 F.3d 478 (D.C. Cir. 1998).

⁴⁴ We note that the Midport and GRH waiver requests indicate that the original applications relied upon the best information available and that newer technology would have provided more accurate information. See FCC File nos. 0000556481, 0000518294, 0000519191, 0000519193, and 0000583106 at waiver attachment. Midport and GRH do not explain what technology they used or was available at the time they applied for the subject authorizations.

⁴⁵ See *supra* note 14, Lawrence E. Vaughn, Jr., 9 FCC Rcd at 4439 ¶ 8 n.5. In this connection, we note that Midport and GRH had a duty to provide accurate information in their applications. See *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982) ("the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate"); see also Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1210 (1985), *recon. denied*, 1 FCC Rcd. 421 (1986), *modified*, 5 FCC Rcd. 3252 (1990), *recon. granted in part*, 6 FCC Rcd. 3448 (1991) (this duty is so important that "the scheme of regulation rests on the assumption that applicants will supply the Commission with accurate information").

⁴⁶ See Lawrence E. Vaughn, Jr., 9 FCC Rcd at 4439 ¶ 9 n.6 (a licensee who builds more than one mile from its authorized coordinates could have more accurately determined the correct coordinates using a standard topographical map).

WPMS522 cancelled automatically.⁴⁷ We also find that Midport and GRH requested waivers for the five subject stations at a time when the authorizations were no longer in effect.⁴⁸ Therefore, we dismiss as moot Midport and GRH's waiver requests and modification applications.⁴⁹

11. We find that Futronics filed a Petition and Reply to Response seeking revocation of the licenses for Stations WPQF373, WPQC503, WPNP688, WPKA269, WPLS641, and WPMS522, which have automatically cancelled. We also find that Futronics filed a Petition to Deny for the captioned modification applications, associated waiver requests and construction extension request, which we dismiss as moot. Therefore, we dismiss as moot Futronics' Petition, Reply to Response, and Petition to Deny⁵⁰ with respect to those stations.

12. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 303(r), and Sections 1.925 and 1.955 of the Commission's Rules, 47 C.F.R. §§ 1.925 and 1.955, the waiver requests filed between June and September 2001 by Midport Electronics, Inc. and GRH & Associates, Inc. ARE DISMISSED.⁵¹

13. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 303(r), and Sections 1.946 of the Commission's Rules, 47 C.F.R. § 1.946, that the Request for Extension filed on September 17, 2001, by Midport Electronics, Inc., IS DISMISSED.⁵²

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 303(r), and Sections 1.925, 1.946 and 1.955 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.946 and 1.955, that the captioned applications, filed by Midport Electronics, Inc. and GRH & Associates, Inc. ARE DISMISSED.⁵³

15. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended 47 U.S.C. § 154(i) and Section 1.955 of the Commission's Rules, 47 C.F.R. § 1.955,

⁴⁷ The Commission discussed the construction requirement and stated that licensees who fail to construct in substantial accordance with their authorized parameters cancel automatically. *See Report and Order*, 6 FCC Rcd 7299 ¶ 9; *supra*, note 44 (establishing a benchmark standard for determining whether a licensee's alleged failure to be in "substantial accordance" with its authorized parameters based on location of facilities should result in cancellation of a license and award of a finder's preference request).

⁴⁸ While we have not received evidence that Stations WPQC503, WPNP688, WPKA269, WPLS641 and WPMS522 have caused interference to nearby amateur radio operations, we note with concern that the partially constructed facilities are located apparently in excess of the fifty-mile limitation imposed by Section 90.273(c) of the Commission's Rules. The Commission carefully adopted this distance restriction to minimize the potential that PLMR operations would cause interference to amateur operations located near certain cities, including Detroit. In this connection, the Commission envisioned that land mobile base and control stations in the Detroit area would be at least forty miles from the nearest amateur station and thus, interference between the two services should be minimized. *See* Amendment of Part 90 of the Commission's Rules to Provide for Private Land Mobile Operation in the 421-430 MHz Band in Detroit, Cleveland, and Buffalo, PR Docket No. 86-163, *Report and Order*, 2 FCC Rcd 825, 827-28 ¶¶ 27-28 (1987).

⁴⁹ 47 C.F.R. § 1.925(c). *See e.g.*, Paging Systems, Inc., *Order on Reconsideration*, 16 FCC Rcd 12571 (WTB PS&PWD 2001) *aff'g Order*, 15 FCC Rcd 23983-23985 ¶¶ 4-5 (WTB PS&PWD 2000) (dismissing as moot request for waiver that was filed after station authorization automatically cancelled for failure to construct).

⁵⁰ *See* 47 C.F.R. § 1.939(g) (petitions to deny may be dismissed if the issues raised become moot).

⁵¹ *See* FCC File Nos. 0000556481, 0000518294, 0000519191, 0000519193, and 0000583106 at waiver attachment.

⁵² *See* FCC File No. 0000593600 at extension attachment.

⁵³ *See* FCC File nos. 0000593600, 0000556481, 0000518294, 0000519191, 0000519193, and 0000583106.

that the ULS database will be updated to reflect that Stations WPQF373, WPQC503, WPNP688, WPKA269, WPLS641, and WPMS522 have automatically CANCELLED.⁵⁴

16. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i) and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the Petition for Initiation of License Revocation Proceeding filed by Futronics, Inc., on August 30, 2001 IS DENIED IN PART AND DISMISSED AS MOOT IN PART to the extent described herein.

17. IT IS ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.939(g) of the Commission's Rules, 47 C.F.R. § 1.939(g), that the Petition to Deny filed by Futronics, Inc., on April 5, 2002, IS DISMISSED AS MOOT.

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁵⁴ The above-referenced stations cancelled on the following dates February 21, 2001 (Station WPQF373), January 22, 2001 (Station WPQC503), December 23, 1999 (Station WPNP688), August 31, 1997 (Station WPKA269), September 13, 1998 (Station WPLS641), and August 1, 1999 (Station WPMS522).